



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Ms. Aileen Hooks, Esq.
Ms. Molly Cagle, Esq.
Baker Botts LLP
98 San Jacinto Blvd, Suite 1500
Austin, TX 78701

September 27, 2019

Re: ITC Deer Park Facility Administrative Order on Consent Proposal

Dear Ms. Hooks and Ms. Cagle:

Thank you for meeting with us on July 31, 2019 and again on September 18, 2019. I thought both meetings were productive and very informative. At our first meeting on July 31, 2019 and during various telephone calls and electronic e-mails, you had offered to EPA Region 6 a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Administrative Order on Consent ("AOC") that would formalize your client's, Intercontinental Terminals Company LLC ("ITC"), commitment to submit a Final Report detailing your client's emergency response efforts following the March 17, 2019 fire and subsequent discharge of incident wastewater into the Houston Ship Channel. This approach is a culmination following previous AOC discussions beginning with a more traditional Time-Critical Removal AOC and evolving into the more narrow, limited scope you recently proposed.

At our last meeting on September 18, 2019, we also discussed EPA's response efforts under CERCLA resulting from the March 17, 2019 incident. During our meeting, you asked for written confirmation of EPA's CERCLA response efforts.

After having discussed your AOC proposal, the EPA has decided it is not in the agency's best interests to enter into an AOC. Following the June 19, 2019 transition of response efforts at the ITC Deer Park Facility and Houston Ship Channel Site ("Site"), the EPA Federal On-Scene Coordinator ("FOSC") no longer has lead oversight. The EPA now acts in a supporting role in overseeing the response with the Texas Commission on Environmental Quality ("TCEQ"). The EPA has no need to incur additional transactional Site costs in negotiating, preparing and finalizing an AOC where emergency response work is now complete.

Nevertheless, the EPA is aware that you and your client have had questions concerning details of the EPA's request for a Final Report and closure of the EPA's March 23, 2019 Clean Water Act ("CWA") Section 311(c) Order. With respect to the former, and for your added convenience, this letter includes a copy of the May 23, 2019 "Expectations Memo" previously provided to your client. It is also my understanding that OSC Adam Adams further explained in more detail what

is requested to be included in the Final Report during our July 31, 2019 meeting. Mr. Adams continues to be available to answer any further questions you may have concerning the Final Report.

During our meetings we also discussed the EPA's March 23, 2019 CWA Order. To be clear, the EPA has overlapping response authorities under both the CWA and CERCLA. Although the EPA issued its CWA order as a part of the response, the EPA also exercised from the beginning of the March 17, 2019 incident its response authority under CERCLA and has continued to do so throughout. The EPA's CERCLA response authority stemmed from sampling data indicating a release or a threat of a release of CERCLA-listed hazardous substances, including but not limited to toluene, benzene, xylene, naphthalene, ethylbenzene and styrene.

As you noted, the March 23, 2019 CWA Order does not include a completion clause. After submission and EPA review of the Final Report, including the incorporation of any EPA comments to draft Final Reports, the EPA intends to provide written notice that all requirements under the Order have been completed. With the exception of any continuing obligations under the Order, such as Record Retention requirements, such written notice will serve to document that all other requirements under the Order have been completed, thereby effectively terminating the Order subject to those continuing obligations.

Lastly, this letter serves to provide you with notice that the EPA intends to pursue in the future a CERCLA cost recovery claim for reimbursement of CERCLA response costs it incurred as it responded to the Site. Once all costs have been accounted for, the EPA will provide you and your client with the amount of such CERCLA response costs. If requested, the EPA will also provide a cost summary report of costs incurred.

Should you have any questions concerning the above, please do not hesitate to contact me at (214) 665-8035 or at quinones.edwin@epa.gov.

Sincerely,



Edwin Quinones
Assistant Regional Counsel
EPA Region 6